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| COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576 | | | EXAMINER CARTAGENA, MELVIN A | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/589,327

Applicant(s)

GMEILBAUER, ENGELBERT

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-19 and 24-30 is/are rejected.
- 7) ☒ Claim(s) 20-23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 17-19, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,152,333 to Binder in view of US 1,972,181 to Chambers and US 2,818,999 to Miller.

Binder shows a device 10 for dispensing flowable paste-like substance as seen in Figs. 1-3, having a housing 11, an accommodating chamber 12, a disposable pack, see column 2, lines 38-41, a discharge nozzle 13, a plunger, see column 2, lines 60-67, an air compressor 30 driven by a battery operated motor 20.

In reference to claim 24, see column 3, lines 27-29.

Binder is silent about the piston having a bore with a closable nut cap and two continuous sealing rings.

Chambers shows a device for dispensing flowable paste-like substance as seen in Fig. 1, having a piston 55 with a bore for valve 58 and a continuous sealing ring 57; the valve 58 has a nut 60 and a recess for the chain 61. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Binder to include a piston with a continuous sealing ring and a valve to seal the piston to the cylinder during a dispensing operation and facilitate withdrawal of the piston from the cylinder during a refill operation as taught by Chambers.

Additionally, Millet shows a dispensing device as seen in Fig. 1, having a piston 40 with two seals 41. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of the Binder-Chambers combination by adding an extra sealing element to the piston to improve the sealing of the piston within the cylinder 10 and prevent product from leaking as taught by Miller.

3. Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,152,333 to Binder as modify by US 1,972,181 to Chambers and US 2,818,999 to Miller as applied to claim 17 above, and further in view of US 5,615,805 to Yoncak.

The Binder-Chambers combination show all claimed features as discussed above except for the use of a removable heating device surrounding the accommodating chamber. Yoncak shows a removable heating device 10 surrounding the accommodating chamber 12. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to place a heating element surrounding to the device of the Binder-Chambers combination in order to maintain proper material consistency when the device is use in cold weather as taught by Yoncak.

4. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,152,333 to Binder as modify by US 1,972,181 to Chambers and US 2,818,999 to Miller as applied to claim 17 above, and further in view of US 7,163,130 to Lafond.

The Binder-Chambers combination show all claimed features as discussed above except for the use of CO₂ cartridges and a pressure reducer to pressurize the product. Lafond shows the use of CO₂ cartridge 4 and pressure reducer 5 to pressurize the content of the product in container 10. It would have been obvious to a person with ordinary skill in the art at the time the

invention was made to modify the device of the Binder-Chambers combination to be used with a CO₂ cartridges and a pressure reducer to adjust for products with different densities and permit continuous use of the dispenser in the absence of electrical power as taught by Lafond.

Allowable Subject Matter

5. Claims 20-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 17-19 and 24-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on M-TH (8:30AM to 7:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754